

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 HAYDEE DROZ-MENDEZ, et al.,

4 Plaintiffs,

5 v.

6 UNITED STATES OF AMERICA,

7 Defendant.  
8

Civil No. 04-1507 (JAF)

9 MEMORANDUM OPINION (F.R.C.P. 52)

10 The facts in this case are straightforward; however, they  
11 present a sad and unfortunate accident, with the ensuing lawsuit. A  
12 bench trial was held on October 31, 2005. These are our findings and  
13 conclusions.

14 Haydée Droz-Méndez is a 78-year-old woman married to Miguel A.  
15 Valentín, a retired Army veteran. On June 6, 2003, the couple  
16 visited Ft. Buchanan, in San Juan, Puerto Rico, to do their weekly  
17 shopping at the U.S. Army Commissary. Upon arriving at the inner  
18 entrance door to the facility, Mrs. Droz slipped and fell on water  
19 and ice that apparently some patron of the facility had dropped in  
20 the area.

21 As a result of the fall, Mrs. Droz injured her right leg,  
22 shoulder, and back, and has suffered pain and the typical  
23 complications of falling at an elderly age.

24 This is not the first time Mrs. Droz has fallen in a public  
25 facility. The record confirms an earlier fall at a supermarket. The

Civil No. 04-1507 (JAF)

-2-

1 medical records confirm that for a long time, at least since before  
2 the first documented fall, Mrs. Droz has been suffering from severe  
3 arthritis, other bone fractures, limitation of movement, and  
4 osteoporosis. As a matter of fact, when she fell at the Commissary,  
5 she was walking with the aid of a cane.

6 The central issue is whether under Mas v. United States, 984  
7 F.2d 527 (1<sup>st</sup> Cir. 1993), the United States Army, as proprietor of the  
8 Commissary store, had actual or constructive knowledge of the  
9 existence of the dangerous condition, in order to be able to correct  
10 it and avoid the risk to patrons. The Mas decision establishes that  
11 in a slip-and-fall case, under Puerto Rico law, plaintiff must  
12 establish as part of her case that the owner of the facility had  
13 actual and constructive knowledge of the dangerous condition.

14 Such evidence is lacking here. We first look at Joint  
15 Exhibit V, which is the Standard Claim Form used in this case to  
16 initiate an administrative claim under the Federal Tort Claims Act.  
17 The form, filled out by Plaintiff's attorney, fails to mention any  
18 fact or circumstance surrounding actual and constructive knowledge of  
19 the dangerous condition. We also look at the evidence presented at  
20 trial and there is a total absence of any evidence, direct or  
21 circumstantial, on the subject of how long the water and crushed ice  
22 had been on the floor or what did the Commissary authorities do or  
23 not do to clean it. Simply, we cannot find any evidence of actual or  
24 constructive knowledge of the condition on the part of the Army

Civil No. 04-1507 (JAF)

-3-

1 Commissary. We also note that it is inevitable to conclude that  
2 crushed ice coming from a careless drop by a patron cannot remain on  
3 the floor in the form of ice for long. The tropical temperatures  
4 prevalent in Puerto Rico, even in an air-conditioned store, would not  
5 allow for crushed ice to remain in that form more than a few minutes.  
6 If the source of the water or ice was an adjacent trash can, we could  
7 only accept water leakage. Crushed ice does not leak out of a trash  
8 can in solid form. Lastly, Plaintiff made no effort to present any  
9 evidence of lack of proper maintenance routines or lack of cleaning  
10 personnel or other circumstances from which we could circumstantially  
11 infer carelessness or at least constructive knowledge on the part of  
12 the Commissary.

13 Under these circumstances, and considering that Mrs. Droz was  
14 very prone to falling no matter what the circumstances, we cannot  
15 find for Plaintiff. The Complaint shall be dismissed.

16 **IT IS SO ORDERED.**

17 San Juan, Puerto Rico, this 2<sup>nd</sup> day of November, 2005.

18 S/José Antonio Fusté  
19 JOSE ANTONIO FUSTE  
20 Chief U. S. District Judge